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ATTORNEY FOR APPELLANT:

CHRIS P. FRAZIER
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ANTWAN GERMANY,)
)
Appellant-Respondent,)
)
vs.) No. 49A02-0611-CR-1055
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Reuben Hill, Judge
Cause No. 49F18-0407-FD-138689

June 13, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Antwan Germany (Germany), appeals the trial court's revocation of his probation.

We affirm.

ISSUE

Germany raises one issue on appeal, which we restate as follows: Whether the trial court properly revoked his probation when it merely considered certified copies of the probable cause affidavit and the charging information of the new charges filed against him.

FACTS AND PROCEDURAL HISTORY

On July 31, 2004, the State filed an Information, charging Germany with Count I, possession of marijuana, a Class A misdemeanor, Ind. Code § 35-48-4-11 and Count II, possession of marijuana, a Class D felony, I.C. § 35-48-4-11. On June 28, 2005, pursuant to an agreement with the State, Germany pled guilty to possession of marijuana, a Class D felony. On the same day, the trial court sentenced Germany to 545 days, with 275 days suspended and 270 days of home detention. As a condition of his probation, Germany could not commit any additional criminal offenses.

On August 25, 2005, the State filed a Notice of Violation of Home Detention, alleging Germany failed to submit to a urine analysis and was absent from the house without authorization. On September 9, 2005, after a hearing, the trial court revoked Germany's home detention and placed him on probation for a period of 275 days. On October 2, 2006, the State filed a second Notice of Probation Violation, alleging that

Germany had violated his probation by being charged on September 18, 2006 with six new charges: two Counts of domestic battery, as Class D felonies; a Count of strangulation, as a Class D felony; a Count of intimidation, as a Class D felony; a Count of domestic battery, as a Class A misdemeanor; and a Count of battery, as a Class A misdemeanor. On October 20, 2006, after a hearing, the trial court found that Germany had violated the terms of his probation and ordered him to serve the remainder of his sentence for possessing marijuana at the Department of Correction.

Germany now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Germany contends that the trial court abused its discretion by revoking his probation. Specifically, he asserts that by merely relying on the probable cause affidavit and the charging information of the newly committed offenses, the trial court had insufficient evidence before it on which to base his revocation. On the other hand, the State asserts that because Germany invited the error he now appeals, he cannot be heard to complain.

In support of its argument of invited error, the State focuses on the following colloquy between defense counsel and the trial court during the probation revocation hearing of October 20, 2006:

[TRIAL COURT]: You want me to look at a [p]robable [c]ause [a]ffidavit?

[DEFENSE COUNSEL]: That hasn't been admitted into evidence, though, Your Honor.

[TRIAL COURT]: Is that what you're saying?

[DEFENSE COUNSEL]: Yes, that . . . I mean, I would think that . . .

[TRIAL COURT]: So it's a simple matter of looking at a [p]robable [c]ause [a]ffidavit? A statement made by someone under oath?

[DEFENSE COUNSEL]: Correct, Your Honor.

(Transcript pp. 12-13). Unlike the State, we do not conclude that Germany invited the error now complained of. In particular, Germany is not disputing the admission of the documents; rather, he is claiming that a mere reliance on a probable cause affidavit and information is insufficient to revoke his probation.

Turning to Germany's argument, we note that a probation revocation hearing is in the nature of a civil proceeding. *Pitman v. State*, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), *trans. denied*. As such, the alleged violation need be proven only by a preponderance of the evidence. *Id.* Moreover, violation of a single condition of probation is sufficient to revoke probation. *Id.* As with other sufficiency questions, we do not reweigh the evidence or judge the credibility of witnesses when reviewing a probation revocation. *Id.* We look only to the evidence that supports the judgment and any reasonable inferences flowing therefrom. *Id.* If there is substantial evidence of probative value to support the trial court's decision that the probationer committed any violation, revocation of probation is appropriate. *Id.*

Ind. Evidence Rule 101(c)(2) provides that the Indiana Rules of Evidence do not apply in probation proceedings. Courts of this State follow the general rule that, with regard to probation proceedings, they may consider any relevant evidence bearing some substantial indicia of reliability, including reliable hearsay. *Id.* When, as here, the

alleged probation violation is the commission of a new crime, the State does not need to show that the probationer was convicted of a new crime. *Whatley v. State*, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006). The trial court only needs to find that there was probable cause to believe that the defendant violated a criminal law. *Id.* Here, the State presented evidence that Germany was arrested and charged with several new offenses following a finding of probable cause, while on probation for the underlying charge. Specifically, the State presented certified copies of the probable cause affidavit and charging information.

In *Pitman v. State*, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), *trans. denied*, the State introduced certified copies of the court docket, police report, and charging information to establish that the defendant had violated the terms of her probation by being charged with new offenses. The *Pitman* court determined that “[t]he State’s use of certified copies of the [documents] regarding Pitman’s new charge [] [was] sufficient to support the revocation of Pitman’s probation. *Id.* The court concluded that the information was obviously relevant and certification of the documents by the court provides substantial indicia of their reliability. *Id.*

As in *Pitman*, we find the introduction of a certified copy of the probable cause affidavit and information sufficient to revoke Germany’s probation. The trial court clearly reviewed the documents and determined that there was sufficient evidence of probative value to believe that Germany had committed the newly charged offenses. *See Pitman*, 749 N.E.2d at 559.

Furthermore, we disagree with Germany's allegation that his constitutional right to cross-examine the author of the probable cause affidavit and information was violated because the State did not call the investigating officer as a witness. Based upon the inapplicability of the rules of evidence in probation proceedings as set forth in Evid. R. 101(c)(2), all of the documents presented by the State were properly admitted. As the certified documents presented sufficient indicia of reliability for the trial court to determine its probative value, the State did not need to present witnesses to attain its burden of proof. *See Whatley*, 847 N.E.2d at 1010.

In sum, based on the evidence before us, we conclude that the trial court did not abuse its discretion by revoking Germany's probation. Accordingly, we decline to reverse the trial court.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly revoked Germany's probation.

Affirmed.

NAJAM, J., and BARNES, J., concur.